

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JOHN JOSEPH BENYI,

Plaintiff,

v.

Civ. No. 20-1244 KG-KBM

LA POSADA, *et al*,


Defendants.

ORDER OF DISMISSAL

This matter is before the Court following Plaintiff's failure to prosecute this action. Plaintiff is incarcerated and *pro se*. He initiated this action on November 30, 2020, by filing a Civil Rights Complaint and Motion to Proceed *In Forma Pauperis*. (Docs. 1, 2). By an Order entered December 7, 2020, the Court granted the motion and directed Plaintiff to make an initial partial payment of \$8.74. (Doc. 3) at 1. Such payment is required by statute. *See* 28 U.S.C. § 1915(b). The amount represents 20% of the greater of Plaintiff's average monthly deposits or average monthly balance for the six-month period preceding this action. *Id.* The Order warned that the failure to timely comply will result in the dismissal of this case without further notice. The deadline to make the initial partial payment was January 6, 2021. Plaintiff did not comply or otherwise respond to the Order. Hence, the Court will dismiss this case without prejudice pursuant to Fed. R. Civ. P. 41(b). *See Olsen v. Mapes*, 333 F.3d 1199, 1204 n. 3 (10<sup>th</sup> Cir. 2003) ("Rule 41(b) ... has long been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff's failure to prosecute or comply with the ... court's orders.").

IT IS ORDERED:

1. Plaintiff's Civil Rights Complaint (Doc. 1) is dismissed without prejudice to refile;
- and
2. The Court will enter a separate judgment closing the civil case.



UNITED STATES DISTRICT JUDGE